

## **REMARKS**

The Abstract of the Disclosure is now rewritten in proper language, format and abbreviated word count.

Claims 1-32 are pending in this application.

Claims 1-3, 11-16, 18-20 and 24-32 are allowed.

Claims 4, 17 and 21 are rejected in part on certain potential prior art patents under 35 U.S.C. § 102(e).

Claims 5-10, 17, 22 and 23 are objected to. Accordingly, claims 5, 17 and 22 are rewritten hereby to clarify what is meant and to overcome all objections.

Enclosed for the Examiner's consideration is a Declaration of Kui Zhang under Rule 37 CFR § 1.131 with attached Exhibits A, B and C proving conception before the April 15, 1999 Priority Date and diligent reduction to practice thereafter. Applicants submit that the declaration removes from prior art consideration two of the four cited patents and thus overcomes the prior art claims rejections.

### **Claim Rejections - 35 U.S.C. § 112**

Claim 17 recites the limitation "the receive-sequence-number sub-field" and "representing the relative send timing" in lines 23 and 28 of page 24, without sufficient antecedent basis for the limitation. Applicants hereby amend claim 17 to clarify the antecedent, thereby rendering it allowable.

Claims 5 and 22 are objected to because applicant claims "writing into the timing probe data packet at the receiver data including at least a." The Examiner suggests that the phrase is missing a word. Applicants hereby amend the claims to make them read better, thereby rendering them allowable.

Claim 6-10 and 23 depend from claims 5 and 22 and are therefore objected to. Applicants' amendments to claims 5 and 22 render these claims allowable as well.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,345,288 B1 to Reed et al, in view of U.S. Pat. No. 6,397,359 B1 to Chandra et al, U.S. Pat. No. 5,101,208 to Parker et al and U.S. Pat. No. 6,430,394 B1 to Boyden.

### **Allowable Subject Matter**

Claims 1-3, 18-20, 24-32 are allowed over the prior art.

### **Prior Art Rejections**

The Examiner has combined the teachings of Reed, Chandra, Parker and Boyden in rejecting claims 4 and 21. Applicants hereby submit a Declaration of Kui Zhan, one of the co-inventors of the present application, to antedate and thus remove as prior art the Chandra and Boyden patents, both of which were filed after the present invention was conceived. Applicants' invention was conceived at least as early as October 29, 1998, more than two months before January 19, 1999, the filing date of the Chandra patent and long before the filing date of the Boyden patent. Declaration, paragraph 3. Indeed, applicants' invention was diligently reduced to practice only approximately two months later, or by December 30, 1998, which is prior to the filing dates of either the Chandra or Boyden patents. Declaration, paragraph 5. See Exhibits A, B and C, which respectively show an e-mail between two co-inventors describing the invention, a software bug/test report illustrating implementation of an improved working version of the invention and a formal software design specification written after the fact of the actual reduction of the invention to practice, all dated prior to the January 19, 1999 Chandra patent application filing date and the June 17, 1999 Boyden patent application filing date.

With the Chandra and Boyden patents thus removed as prior art, only Reed's and Parker's teachings remain. The Examiner admits that Reed does not teach timing probes. The Examiner effectively admits also that Parker does not teach timing probes of the type claimed, since she relies additionally on the teachings of Chandra and Boyden in the claims' rejections. Thus, Parker's only relevant teachings are of the use of "precision clocks" to partially encrypt data transfers in a secure ground/air communication system. Parker's interrogatories sent to an aircraft incidentally include clock data *for authentication purposes, not for the purpose of measuring performance, e.g. round-trip latency, in an Internet protocol (IP) network communication.*

Thus, Parker teaches no "analyzing the timing probe data packet contents including at least the send time of day (TOD) stamp as a performance measure of the network", as required in claims 4 and 21. Nor do Reed and Parker together suggest such analysis of a

timing probe data packet, since "Reed is silent on timing probe associated with a time of day stamp." Office action, page 4. Reed's two references to "timestamps" and "time/date stamps" (column 108, line 40 and column 109, line 61, respectively) pertain to use of the same in network security and user authentication. This is more similar to Parker's use of his "precision clocks" as part of encryption for secure communications than to the claimed invention.

Thus, Parker and Reed consistently teach one of ordinary skill that clock and timestamp data are useful only for network access security/user authentication. As such, there are no teachings of record that involve analyzing send TOD data, at either the sender of the receiver, as a performance measure of the IP network.

### CONCLUSION

For the foregoing reasons, reconsideration and allowance of claims 1-32 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

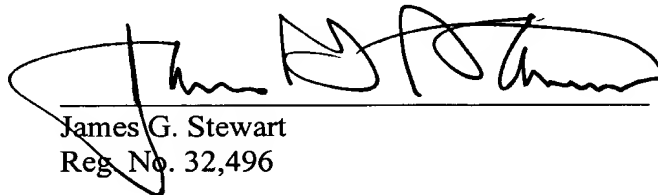


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Respectfully submitted,

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